

At that point Fitzek joined the day shift and inspector Boston arrived. Rabbitt introduced himself and he proceeded onto the property to obtain clearance. About five minutes later Boston returned with Mark Larsen, a safety committeeman at the mine (Tr. 90). In discussing the matter White, the Deer Creek mine manager, questioned Rabbitt's authority to enter under the contract. V Rabbitt indicated his authority was under § 103(f) of the Act (Tr. 90). After the men discussed the matter Boston issued a citation and he gave White 10 minutes to abate (Tr. 91).

White then relented but told Rabbitt he would have to sign a waiver of liability form. Discussion continued. Boston then called his supervisor. White requested another citation. Boston complied and issued a citation (Tr. 91, 92).

Mark Larsen (representative of the miners from the safety committee), Terry Jordan and Dixon Peacock (for Emery) and Rabbitt accompanied the inspector underground (Tr. 93). While underground one citation was written concerning the company's roof control plan. The inspection team went to a specific area because Emery had requested that MSHA abate certain prior citations and orders in that area (Tr. 93). During this inspection Boston asked for and received opinions from those present (Tr. 94). Rabbitt also pointed out one roof control violation to Boston (Tr. 94).

Rabbitt accompanied Boston until 5 p.m. that day (Tr. 95). At about 2:15 p.m. White handed Rabbitt a letter. The original had been forwarded to the safety committee of the Union, Rabbitt's copy stated that under the wage agreement Emery required 24-hour notice in writing before any international health and safety representative could enter the mine. White also mentioned the waiver requirement (Tr. 96, 97; UMWA Ex. 4).

Rabbitt had never previously knowingly ^{9/} signed a waiver at the Deer Creek mine or elsewhere. The first time he heard of the waiver was on March 11 or 12. However, he signs a check in/check out form which is common at all mines (Tr. 98, 99, 123, 142; UMWA Ex. 5). Rabbitt next saw the waiver release form on April 15. He declined to sign it because he thought his supervisors should approve such action (Tr. 133, 134; Contestant Ex. 3).

8/ The contract referred to by White was received in evidence and the scope of its terms are not an issue in the case. The agreement is entitled "Bituminous Coal Wage Agreement of 1984 between Emery Mining Corp and the International Union United Mine Workers of America". Article III, section (d) of the contract provides the conditions under which the UMWA may have access to the mine (UMWA Ex. 7).

9/ In fact, on January 10, 1986, March 7, 1986 and April 15, 1986 Rabbitt had signed a "Visitor Release" form that was kept in a clipboard at the Deer Creek mine (Tr. 100, 101, 137, 138, 139, 142; Contestant Ex. 4; UMWA Ex. 5).